

Results from the consultation on the proposed Naming Policy for the Occupational Therapy Board of New Zealand

Feb 2020

Background

The OTBNZ is required by recent changes to the HPCAA to develop a naming policy which describes the circumstances under which an occupational therapist who is the subject of an order or determination may be publically named. This policy is required to be in place by 11 April 2020. The purpose of this policy as defined in section 157B(2) of the HPCAA is:

- Enhance public confidence in the health professionals for which the OTBNZ is responsible and its disciplinary procedures by providing transparency about its decision making processes; and
- Ensure that health practitioners whose conduct has not met expected standards may be named where it is in the public interest to do so; and
- Improve the safety and quality of health care.

Four submissions were received during the consultation period. Comments from the submission are included in Table 1, and responses to questions in Table 2.

Consultation responses

Table 1: Comments received on the proposed Naming Policy

Submission from	Comments	OTBNZ Response to comments
Occupational Therapy Board Australia	<p>At its last meeting, the Occupational Therapy Board of Australia (the Board) considered the Occupational Therapy Board of New Zealand's proposed new <i>Naming policy</i> (the policy). The Board appreciates the opportunity to review and provide comment on the policy. The Board noted that the policy is largely congruent with the approach that is taken by it in relation to naming practitioners who have been the subject of a complaint and relevant action by the Board. As such, the Board had no particular feedback that it wished to note in relation to the policy.</p> <p>The Board looks forward to seeing how the OTBNZ implements this policy once finalised.</p>	
Ingrid Wubben	<p>I have been assisting a chiropractor friend with his response to the NZ Chiropractic Board's survey on the subject of naming. I think his information has relevance to Occupational Therapy and attach the following:</p> <p>4. Do you agree with that the guiding principles the Board will apply in decisions to publish a notice?</p> <p>Content from High Court judgement re Spencer v General Osteopathic Council should be considered as appropriate guidance ie: threshold of culpability, natural justice etc. See references below Spencer v General Osteopathic Council , 2012: https://www.iclr.co.uk/document/2016035686/%5B2012%5D%20EWHC%203147%20(Admin)/html https://www.osteopathy.org.uk/news-and-resources/document-library/our-work/opc-25-june-2014-item-7-guidance-on-threshold-criteria-for/ https://www.gcc-uk.org/assets/publications/IC_Decision_Making_Guidance_October_2019.pdf</p> <p>6. What else would you like to tell us about this proposed policy that may improve it?</p>	<p>As part of the OTBNZ's commitment to natural justice and transparency practitioners are advised of steps taken during the investigation of an issues. Naming of a practitioner under this policy would be considered when this process is completed, thus the practitioner is aware of the issue and has been informed of possible outcomes prior to the notification period. In the rare case where a practitioner is subject to immediate interim orders under section 48, the 20 day period would apply.</p> <p>The primary purpose of the OTBNZ is protection of the public. The OTBNZ employs a right-touch approach to regulation where the action taken is proportional to the issue being addressed. This involves processes for preliminary assessment of identified issues and options for resolution at differing levels, including an option for facilitated resolution of appropriate matters</p>

	<p>There is a necessity for an appropriate threshold of culpability to be established, as well as a robust preliminary consideration stage, before progressing to a full enquiry with potential naming for misconduct etc. In reference to No: 8 & 9 (page 3) of : https://www.osteopathy.org.uk/news-and-resources/document-library/our-work/opc-25-june-2014-item-7-guidance-on-threshold-criteria-for/</p> <p>The view of the Law Commissions state: No 8. '...We strongly urge the regulators and their fitness to practice panels to consider carefully regulatory interventions which do not take some colour from the need to protect the public.' No 9. 'Indeed given the costs that the proceedings impose on registrants and, in many cases the National Health Services, the pursuit of minor matters with excessive zeal would be contrary to the public interest.'</p> <p>Life experience and my special interest in learning problems, trauma and the polyvagal system has lead me to question how relationships are changing in response to increased prevalence of neurodisabilities in New Zealand (See report attached). Neuroscientist Jill Bolte Taylor opened my eyes further as to how people process information differently.</p> <p>My concern regarding naming Occupational Therapists would be that gross misconduct would need to be proven first. A therapist can be traumatised if a false allegation (but one which is believed by the complainant to be true in their reality) is made and 20 days may not be long enough for the therapist to process their situation.</p> <p>I hope this is helpful.</p>	
Kirk Reed	<p>Section 4a seems to contradict section 2b. Section 4b clarify and state if disciplinary history includes any investigations regardless of there being an order imposed order, at the moment this is unclear. Section 4e this seems to contradict section 2b.</p> <p>The policy statement is unclear. The Policy statement (page 8 of document) refers to "maintain professional standards of education, conduct and performance " line 3 and then states "has fallen short of professional expectations" line 9. It is unclear what the difference is</p>	<p>Section 2c clarifies section 2b, where a practitioner may be named who is the subject of an interim order. One reason for this could be section 4a where non-disclosure of an order may pose a risk of harm to clients.</p> <p>The OTBNZ is required to share information regarding practitioners under several sections of the HPCAA. The Naming Policy refers only where naming</p>

	between professional standards and professional expectations. Professional standards and expectations are two different things; a professional standard is usually set and documented whereas professional expectations are less overt, loosely applied and open to various interpretations and understandings. This needs to be clarified.	is considered under section 167. Investigations that have not resulted in an order are not included in the policy. The wording of 'professional expectations' will be replaced by 'professional standards' in line 9 to aid in clarification.
Rio Jodache	No comments	

Responses to questions:

Table 2: Responses to consultation questions

Submission from	Do you agree with the proposed circumstances under which an occupational therapist may be named?	Do you agree with the principles the OTBNZ proposes to use when making decisions about naming an occupational therapist?	Do you agree with the information the OTBNZ may disclose when naming a practitioner?	Do you agree with the proposed methods of naming an occupational therapist?	Is the notification period (20 business days) to the practitioner adequate?
Rio Jodache	Yes	Yes	Yes	Yes	Yes
Kirk Reed	No	No	Yes	Yes	Yes
Occupational therapy Board Australia	-	-	-	-	-
Ingrid Wubben	-	-	-	-	-

Amendments to Policy

Policy section	Original text	Updated text
Policy statement	“It allows the OTBNZ to publish information about an occupational therapist where that occupational therapist has fallen short of professional expectations or is otherwise the subject of an order or direction”	It allows the OTBNZ to publish information about an occupational therapist where that occupational therapist has fallen short of professional standards or is otherwise the subject of an order or direction”
4 c	Accountability - occupational therapists are accustomed to being held to account for the standard of care or service they provide. They should expect that some information may need to be disclosed if serious accountability or health and safety concerns are raised, including non-compliance with an existing order.	Accountability - occupational therapists are accustomed to being held to account for the standard of care or service they provide. Information may need to be disclosed if serious accountability or health and safety concerns are raised, including non-compliance with an existing order.